

# DIRECTIVE

## JOB TRAINING PARTNERSHIP ACT

Number: D97-27

Date: July 24, 1998

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TO: SERVICE DELIVERY AREA ADMINISTRATORS  
PRIVATE INDUSTRY COUNCIL CHAIRPERSONS  
JTPD PROGRAM OPERATORS  
EDD JOB SERVICE OFFICE MANAGERS  
JTPD STAFF

SUBJECT: IMPLEMENTATION OF JTPA WAIVERS

### EXECUTIVE SUMMARY:

#### Purpose:

This Directive provides instruction to the Service Delivery Areas (SDA) for requesting specific waivers to the state's approved waiver plan of the Job Training Partnership Act (JTPA). This Directive obligates SDAs to provide assurances and signatures required by the Department of Labor (DOL) that verify appropriate review and comment responsibilities have been met.

#### Scope:

All SDAs must implement the three state-imposed waivers. Selection of any or all of the remaining seven optional waivers is a local decision.

#### Effective Date:

All waivers are effective July 1, 1998, through June 30, 1999. ***Since the administrative responsibilities to implement waivers must be carried out prior to implementation, SDAs are authorized to meet these responsibilities immediately. Waivers may not be implemented until the "Waiver Checklist and Performance Agreement" (or previous assurances and signatures as discussed in this Directive) are received by the state.*** This Directive is effective immediately.

### REFERENCES:

- Public Law 104-208
- Public Law 105-78
- Training and Employment Information Notice (TEIN) 11-96, November 8, 1996, Subject: Statutory and Regulatory Waiver Authority of the Job Training Partnership Act and Wagner-Peyser Act
- Training and Employment Guidance Letter (TEGL) 6-96, April 1, 1997, Subject: Guidelines for Implementing Job Training System Improvements Through Waivers of the Job Training Partnership Act (JTPA) and the Wagner-Peyser Act
- JTPA Information Bulletin B96-84, dated January 13, 1997, Subject: JTPA/Wagner-Peyser Waiver Authority

- JTPA Information Bulletin B96-112, dated March 7, 1997, Subject: JTPA/Wagner-Peyser Waiver Requests Process
- JTPA Information Bulletin B96-130, dated April 24, 1997, Subject: State JTPA Waiver Plan - Public Hearing
- JTPA Information Bulletin B97-83, dated January 23, 1998, Subject: Status of the California Waiver Plan
- JTPA Information Bulletin B97-86, dated January 30, 1998, Subject: Proposed Model For Measurement Of Performance Under the California State Waiver Plan
- JTPA Information Bulletin B97-144, dated June 4, 1998, Subject: California JTPA Waiver Grant Agreement Modification

#### **STATE-IMPOSED REQUIREMENTS:**

This Directive contains state-imposed requirements, which are printed in ***bold, italic type***.

#### **FILING INSTRUCTIONS:**

This Directive supersedes D97-1, dated July 1, 1997. Retain this Directive until further notice.

#### **BACKGROUND:**

The DOL Appropriations Act for 1997 (Public Law 104-208) provided authority for the Secretary of Labor to grant states statutory and regulatory waivers of JTPA and Sections 8, 9, and 10 of the Wagner-Peyser Act, with specified exceptions. This authority was extended by the DOL Appropriations Act for 1998 (Public Law 105-78). States could apply for waivers by submitting a plan including, but not limited to, the goals to be achieved, the expected outcomes, a description of the individuals impacted by the waivers, the monitoring process, and the public review and comment process.

The California State Waiver Plan was signed by the Governor and subsequently received by DOL for approval on May 23, 1997. The original plan, developed with the cooperation and input of a wide variety of stakeholders, contained the state's request for 12 waivers of JTPA.

The DOL approved the state's waiver plan with modifications on May 8, 1998. While approving California's unique "cafeteria" selection process for optional waivers, DOL rejected the state's proposal varying performance measure increases among waivers. The DOL imposed a performance increase of 5 percent statewide. Additionally, DOL directed the state to integrate performance expectations into its Title II incentive award process.

#### **POLICY AND PROCEDURES:**

***The Job Training Partnership Division (JTPD) will transmit guidance on the implementation of the statewide and optional waivers in a single, stand-alone document, with the exception of employment generating activities. Guidance related to this waiver will be issued in a separate directive.***

***Three of the waivers require systemwide changes in reporting and accounting procedures. These are statewide waivers and will be implemented in all SDAs.***

***The following three statewide waivers must be implemented by all SDAs:***

- ***Reduce the cost categories to two (administration and program) for all programs,***
- ***Replace the Youth Entered Employment Rate and Youth Employability Enhancements Rate with one Youth Positive Termination Rate performance standard, and***
- ***Replace Title III post-program follow-up requirements with Unemployment Insurance (UI) base wage file matching.***

***The remaining seven waivers are optional. Each SDA may choose to implement any one or a combination of the following waivers that best meet local needs:***

- ***Allow stand-alone job search, job search assistance and work experience for all youth and adults.***
- ***Allow post-termination services and training, including On-the-Job Training (OJT), for up to one year for all titles.***
- ***Exclude Social Security Disability Income (SSDI) as income in determining eligibility for Title II services.***
- ***Waive the requirement that youth OJT assignments must pay the average adult wage.***
- ***Allow flexibility to offer the range of employability enhancement training to all youth, regardless of age.***
- ***Allow prescribed use of limited JTPA Title II and Title III funds for employment generating activities.***
- ***Allow the use of program income earned in one JTPA title for any JTPA title.***

### **Reporting Requirements**

This Directive supersedes JTPA Directive D97-1, Implementation of JTPA Waivers. The Directive D97-1 includes DOL requirements for a public review process, and assurances and signatures by SDAs. This Directive discusses four different scenarios for waiver selection and reporting:

#### **1) Optional Waivers Selected - No Assurances on File with State**

***This option applies to SDAs selecting optional waivers along with implementing statewide waivers that did not:***

- ***Complete the requirements and provide the assurances and signatures to the state in the “Request For Waivers And Performance Agreement” of Directive D97-1, or***
- ***Cannot verify this information is on file with the state.***

***The SDA must conduct a public review and comment process and complete the attached “Waiver Checklist and Performance Agreement.”***

***Through a public review and comment process, all SDAs should determine which of the optional waivers they will implement locally. The federal enabling legislation for waivers requires an inclusive public process. The state's waiver plan, which was reviewed extensively at the state level, contains assurances that there will also be a local public review process for each of the SDAs that adopt the optional waivers. Public notification of the review process may include publication in the area newspaper or a meeting called by the Private Industry Council (PIC).***

***Those waivers selected by each SDA should be marked on the attached forms, “Waiver Checklist and Performance Agreement,” which must be signed by the Local Elected Official (LEO), the PIC Chair, and the SDA Administrator. By accepting these waivers, the SDA agrees to adopt the associated performance improvements. This agreement will become part of the SDA's Job Training Plan and the waivers will be incorporated into the monitoring process. If an SDA does not wish to implement any of the optional waivers, the form must be returned with only the pre-checked box for statewide waivers and the assurance of the LEO, PIC Chair, and SDA Administrator that the performance measures for those three waivers will be adopted.***

The SDAs must further:

- Verify that the required groups were given the opportunity to review and comment on the proposed waiver(s);
- Describe the local public process for adopting waivers; and
- Describe the process for removal of barriers, i.e., policies, guidelines, rules and regulations promulgated locally (This criteria is required by DOL guidelines, and has been assured by the state's plan).

2) Optional Waivers Selected - Assurances on File with the State

***This option applies to SDAs selecting optional waivers along with implementing statewide waivers that:***

- ***Completed all requirements and provided all assurances and signatures to the state in the “Request For Waivers And Performance Agreement” of Directive D97-1; and***
- ***Can verify this information is on file with the state.***

***The SDA must select their choice of optional waivers from the waiver checklist. The SDA Administrator must sign on the bottom of the first page of the “Waiver Checklist and Performance Agreement” verifying that all reporting requirements have been met previously.***

3) No Optional Waivers Selected - Assurances on File with the State

*This option applies to SDAs selecting no optional waivers and implementing statewide waivers only that:*

- *Completed all requirements and provided all assurances and signatures to the state in the “Request For Waivers And Performance Agreement” of Directive D97-1; and*
- *Can verify this information is on file with the state.*

*The SDA must return the waiver checklist for the three pre-selected statewide waivers. The SDA Administrator must sign on the bottom of the first page of the “Waiver Checklist and Performance Agreement” verifying that all requirements have been met previously.*

4) No Optional Waivers Selected - No Assurances on File with the State

*This option applies to SDAs selecting no optional waivers and implementing statewide waivers only that did not:*

- *Complete the requirements and provide the assurances and signatures to the state in the “Request For Waivers And Performance Agreement” of Directive D97-1; or*
- *Cannot verify this information is on file with the state.*

*The SDA must conduct a public review and comment process and complete the attached “Waiver Checklist and Performance Agreement” (see number “1)” above for details).*

Job Training Plan Reporting Requirements

*As an SDA implements waivers, these changes must be incorporated into the Job Training Plan. The significance of the change (major or minor) determines the method used to implement the plan change. Additionally, the level of review needed prior to submittal of a plan change will vary depending on the type of change; for example, review/comment by local interested parties, PIC and SDA administrative entity concurrence, or simply SDA administrative entity review. For specific requirements regarding modifications and adjustments to the Job Training Plan, see the JTPA Job Training Plan and Substate Plan: Handbook of Instructions for Program Years (PY) 1998 and 1999 at:*

<http://wwwedd.cahwnet.gov/d97-16p2.pdf>

*An SDA may have previously completed the public review process and selected waivers as required in Directive D97-1. After the terms of the revised grant modification were released, the SDA may have decided to add or delete certain waivers. An SDA may make the decision to add or delete waivers unilaterally from their initial plan in the “Request For Waivers And Performance Agreement” of Directive D97-1, if it can be reasonably determined that further public review and discussion would not be beneficial.*

## **Performance Measurement**

For purposes of performance measures, the waivers are granted for funds available for expenditure during July 1, 1998 through June 30, 1999, and therefore, could affect JTPA funds for PY 1998, 1997, and 1996 depending upon fund availability during the waiver period.

The revised JTPA Grant Agreement Modification states:

“The State agrees to a performance improvement of five percent (5%) at the State level measured at the conclusion of Program Year 1998 using actual performance in PY 1997 as the baseline for improvement.”

***Under JTPA waivers, all SDAs will be held responsible for meeting performance measurement increases.***

- ***For SDAs that implement statewide waivers only and choose not to select optional waivers, the state will expect a 2 percent increase in the SDAs' Youth Positive Termination Rate.***
- ***For SDAs that choose one or more optional waivers, the state will use the performance measurement model developed in cooperation with the SDAs to determine the extent of the performance increase that will be required on each of the Title II core performance measures and the Title III Entered Employment Rate. This model takes into account the relative performance of SDAs and the client mix served by the SDAs. See "Attachments 2 and 3" for the methodology and example of this model.***

Since DOL selected PY 1997-98 as the base year for measurement, SDAs will not know their performance measurement expectations until at least October 1998.

For SDAs that select any of the optional waivers, performance improvement expectations will be required for each of the Title II core performance measures and the Title III Entered Employment Rate. In California, the five core Title II measures include:

- Adult Follow-up Entered Employment rate
- Adult Welfare Follow-up Entered Employment Rate
- Youth Positive Termination Rate
- Adult Follow-up Weekly Earnings
- Adult Welfare Follow-up Weekly Earnings

The SDAs will incur no direct sanctions for failing to attain the performance measures under waivers; however SDAs will still be required to meet the performance standards on the core measures. The same sanctions will apply for failure to meet Title II core standards for two consecutive years.

## **Incentive Awards for Waivers**

***The state will set aside \$5,000 for each SDA that chooses any optional waivers. For an SDA to receive the \$5,000 incentive award, it must:***

- ***Meet performance standards under the statutory JTPA performance system; and***

- ***Meet or exceed expectations for at least four of the five Title II core performance measures under waivers. Any incentive money not awarded for waivers performance will revert to the annual Title II incentive programs.***

#### **ACTION:**

The SDAs must determine which optional waivers to implement and begin the public process for local approval. If the public process was completed previously and the required assurances and signatures are on file with the state, the SDA Administrator must select the optional waivers and/or affirm the acceptance of the three statewide waivers from the ***waiver checklist***. All SDAs must complete the public process, collect all assurances and signatures, select their optional waivers, and return the ***“Waiver Checklist and Performance Agreement”*** before implementing waivers.

As soon as this process has been completed, send the ***“Waiver Checklist and Performance Agreement”*** form to:

Jim Curtis, Manager  
Program Management Section  
Job Training Partnership Division  
Employment Development Department  
800 Capitol Mall, MIC 69-1  
Sacramento, CA 95814

#### **INQUIRIES:**

Please direct inquiries about this Directive to your program manager at (916) 654-7799 or Georganne Pintar, Policy Unit Manager, at (916) 654-7611.

/S/ BILL BURKE

Assistant Deputy Director

Attachments available on Internet:

1. Waiver Checklist and Performance Agreement
2. Performance Measurement Model (Methodology)
3. Performance Measurement (Model Matrix)

Attachments available with hyperlink.

4. [Department of Labor, JTPA Liaison Letter \(475 KB\)](#)
5. [California JTPA Grant Agreement Modification \(922KB\)](#)

## WAIVER CHECKLIST AND PERFORMANCE AGREEMENT

Name of SDA: \_\_\_\_\_

A. Waivers selected:

<input checked="" type="checkbox"/>	3 Statewide Waivers <ul style="list-style-type: none"> <li>• Youth Positive Term. Rate.</li> <li>• 2 Cost Categories, <i>Program</i> and <i>Administration</i></li> <li>• Title III PPFU</li> </ul>
<input type="checkbox"/>	Stand Alone Job Search and Work Experience - Adults
<input type="checkbox"/>	Stand Alone Job Search and Work Experience -Youth
<input type="checkbox"/>	Stand Alone Job Search and Work Experience -Title III
<input type="checkbox"/>	Post-termination Services
<input type="checkbox"/>	Exclude SSDI from income
<input type="checkbox"/>	Youth OJT without adult wage requirement
<input type="checkbox"/>	Youth Employment Enhancements
<input type="checkbox"/>	Employment Generating Activities
<input type="checkbox"/>	Use Program Income for any Title

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Signature of Service Delivery Area Administrator

I certify that all public review for JTPA waivers within this SDA have been completed previously; all assurances and signatures of the Local Elected Official, Private Industry Council Chair and Service Delivery Administrator are on file with the State of California.



B. Certify that the following groups have been afforded the opportunity to review and comment on the proposed waiver(s):

☐ **Local Area Elected Officials and Private Industry Councils**

☐ **Educational and other Public and Private Non-Profit Agencies**

☐ **Labor Organizations requiring skills related to the proposed training**

C. Describe your local public process for adoption of the waivers:

D. Describe the actions you will take to remove local barriers (i.e., policies, guidelines, rules and regulations):

E. Assurances and Signatures:

The \_\_\_\_\_ Service Delivery Area hereby adopts the performance goals associated with the three statewide waivers and with the optional waivers it has selected to implement, as indicated on page one.

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LOCAL ELECTED OFFICIAL

DATE

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PIC CHAIR

DATE

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SDA ADMINISTRATOR

## PERFORMANCE MEASUREMENT MODEL

The model was developed around the following principles of performance improvement:

- California and the local areas are committed to continuous improvement.
- Lower performing local areas will be expected to increase their performance relatively more than higher performing local areas.
- Expectations for performance improvement should consider the relative potential for success (e.g. a local area with poor economic conditions and a large client base with multiple barriers should not be expected to perform as well as an area without these challenges.)

The column references below refer to the attached table. The table in Attachment 3 is for example purposes only. In the example, the base year is Program Year (PY) 1996-97 and the measurement year is PY 1997-98. For the purpose of evaluating performance under waivers, California's base year will be PY 1997-98 and the measurement year will be PY 1998-99. A similar table will be developed for each of the six performance measures to be reviewed after waivers implementation.

Column A	This represents ranges for <u>actual</u> performance in PY 1996-97. These ranges are the framework to address the principle that a higher performer should not be expected to increase performance to as great a degree as a relatively lower performer. Under the proposed plan for evaluating waivers, a local area would be assigned to a range based on its actual performance in PY 1997-98.
Column B	This is the performance improvement expectation under waivers for each range.
Column C	Calculation of the expected improvement amount (Column A multiplied by Column B).
Column D	The unadjusted actual performance expectation after implementation of waivers. This is actual performance in the base year plus the performance increase defined in Column C.
Column E	This is the adjustment to the actual performance expectation based on the "risk factors in the local area" for the current year which performance is being measured.
Column F	Expected actual performance by the local area after implementation of waivers.

## Performance Measurement<sup>(1)</sup>

Example: Title III Entered Employment Rate Performance Measure

	(A)	(B)	(C)	(D)	(E)	(F)
Example SDAs with their Actual Performance for PY 1996-97	Ranges for Actual PY 1996-97 Performance	Expected Percentage Improvement	Actual Performance Increase (AxB)	PY 1997-98 Unadjusted Performance Goal (A+C)	PY 1997-98 Performance Model Adjustment (4)	Adjusted PY 1997-98 Performance Goal (D+E)
	=>80% <sup>(2)</sup>	0.0%				
	77.1 - 79.9%	1.0%				
	74.1 - 77.0%	2.0%				
	70.1 - 74.0%	3.0%				
SDA "A" 68.82%	67.1 - 70.0%	4.0%	2.75%	71.6%	2.3%	73.9%
	60.1 - 67.0%	5.0%				
SDA "B" 50.71%	<=60.0% <sup>(3)</sup>	=>6.0%	3.04%	53.8%	1.4%	55.2%

- (1) Program Year (PY) 1996-97 is used as the base year for example purposes only.
- (2) Expected performance is capped at 80% in this example.
- (3) The State will negotiate an expected performance increase with SDAs when performance is 60% or below on a case by case basis.
- (4) Actual adjustment to the national departure point. The calculation of this factor occurs at the end of the program year. It represents the effect of local factors (participant characteristics and economic conditions) on SDA performance expectations compared to national averages.